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5 PLANNED PARENTHOOD
6 FEDERATION OF AMERICA, INC., et al.,

6 Plaintiffs,

7 v.

8 CENTER FOR MEDICAL PROGRESS, et
9 al.,

10 Defendants.

Case No. [16-cv-00236-WHO](#)

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15 **TENTATIVE ORDER ON ADVERSE
16 INFERENCES**

17 Having considered the full record before me, including the testimony to date and the
18 documentary evidence admitted, I am inclined to conclude that plaintiffs have made the required
19 substantial need showing required under *Doe v. Glanzer* and other Ninth Circuit precedent to
20 justify giving the jury a list of specific adverse inferences that they may, but are not required to
21 make, with respect to defendant Newman and third-parties Baxter and Davin.

22 The inferences I am inclined to allow, identified below, are supported by the questions
23 asked by plaintiffs in the depositions that Newman, Baxter, and Davin refused to answer under the
24 Fifth Amendment. The inferences go to core, disputed issues regarding the defendants' intent,
25 knowledge, and conduct in this case relevant to the claims arising under federal and the laws of
Texas, Colorado, Florida, Maryland, and the District of Columbia, but not relevant to the claims
arising solely under California law. Other evidence in this case, including admitted documentary
evidence, support the existence of the facts that plaintiffs seek to establish through the inferences.
Because of the nature of inferences, generally going to the defendants' intent and knowledge, the
inferences cannot be otherwise adequately established through less burdensome means. There is
no unfair prejudice to Newman, Baxter, or Davin from allowing the inferences identified below.

26 Finally, prior to reading the inferences, I intend to instruct the jury as follows:

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28 In this case, Troy Newman exercised his right under the Fifth
Amendment not to incriminate himself and did not answer any
substantive questions asked by plaintiffs during his deposition.

1 Accordingly, he will not testify in this trial. For claims based on
2 California law, you may not consider that, or speculate about why,
3 Newman invoked the Fifth Amendment and refused to answer. For
4 claims based on federal law, and the laws of Florida, Maryland, and
5 the District of Columbia, you may make an adverse inference from
6 the fact Newman invoked the Fifth Amendment and refused to answer
7 questions. In a moment, I will list the adverse inferences that you
8 may but are not required to make.

9 In addition, the parties have agreed that certain exhibits are
10 admissible. I will allow the plaintiffs to display them as they choose
11 as relevant to the permissible adverse inferences. Further, there are
12 pleadings that have established certain facts; the plaintiffs may recite
13 them as they choose as relevant to the permissible adverse inferences.

14 The inferences I am inclined to give are as follows:

15 **NEWMAN 1.** Troy Newman co-authored the book “Their Blood Cries Out,” which reflects his
16 beliefs that “...the United States government has abrogated its responsibility to deal properly with
17 the blood-guilty” and that “This responsibility rightly involves executing convicted murderers,
18 including abortionists, for their crimes in order to expunge bloodguilt from the land and people.”

19 **NEWMAN 2.** Troy Newman and his organization Operation Rescue operate the website
20 “AbortionDocs.org,” which publicizes the names, photographs and business addresses of abortion
21 providers, including Dr. Deborah Nucatola and Dr. Mary Gatter.

22 **NEWMAN 3.** Troy Newman understood that one of CMP’s goals was to end abortion, and to
23 defund and shut down Planned Parenthood.

24 **NEWMAN 5.** Troy Newman understood that CMP’s plan was to conduct creative, scenario-
25 based “gotcha” stings, that would include undercover videos of Planned Parenthood abortion
26 providers.

27 **NEWMAN 6.** Troy Newman suggested to David Daleiden that they communicate through an
28 anonymous e-mail address that only they would know about in order to hide their communications
about CMP and the Human Capital Project.

29 **NEWMAN 7.** Troy Newman had an integral role in CMP and the Human Capital Project since its
30 origin in 2013, including advising David Daleiden, directing the Project, and providing
31 consultation services and material support for the Human Capital Project.

32 **NEWMAN 9.** Troy Newman was the co-author of the book “Abortion Free.” In the book,
33 Newman discusses elaborate “sting” operations against abortion providers, in which a team goes
34 into clinics with hidden video cameras to record clinic workers and abortion providers. Newman’s
35 described this type of “hoax scenario” that requires “a team that is good at role-playing as well as
36 specialized video cameras that are undetectable during the personal interview.” He understood that
37 the same methods and strategies were being used by David Daleiden, Susan Merritt, and Adrian
38 Lopez in recording Plaintiffs’ doctors and staff.

39 **NEWMAN 10.** Troy Newman understood that BioMax was created as a front organization to
40 provide a cover story to allow Daleiden, Merritt, and Lopez to tape Plaintiffs’ doctors and staff.

1 **NEWMAN 11.** Troy Newman understood that Daleiden, Merritt, and Lopez lied about BioMax
2 so they could tape Plaintiffs' doctors and staff without raising suspicions.

3 **NEWMAN 12.** Troy Newman knew that David Daleiden, Susan Merritt, Anna Bettisworth, and
4 Brianna Baxter were using false names in order to infiltrate conferences of abortion providers
because they would not get in using their real names.

5 **NEWMAN 13.** Troy Newman knew that the CMP actors posing as BioMax employees carried
6 concealed video cameras and taped Planned Parenthood doctors and staff.

7 **NEWMAN 14.** Troy Newman knew that the Planned Parenthood employees who were taped by
8 the people paid by CMP were not told that they were being taped.

9 **NEWMAN 15.** Troy Newman knew that CMP planned to create short videos to be posted online
10 containing portions of the footage that was recorded surreptitiously, and Newman previewed those
videos before they were released.

11 **NEWMAN 16.** Troy Newman's motive and intent in participating in CMP and the Human
12 Capital Project were to "finish off Planned Parenthood and end abortion within a few years,"
"defund[]" Planned Parenthood, "tak[e] down their empire," and to "destroy their death machine."

13 **BAXTER 1.** Brianna Baxter has been involved in pro-life activities since high school, including
14 with Live Action and the Survivors of the Abortion Holocaust, who describes itself as "boots on
the ground on the front lines of the battle to save the preborn babies of America."

15 **BAXTER 2.** Brianna Baxter used her fake identity and backstory to infiltrate conferences
16 because she believed it was necessary to get people to trust and talk to her.

17 **DAVIN 1.** Annamarie Bettisworth Davin has a long history of anti-abortion activism, including
18 participation in Live Action and Survivors of the Abortion Holocaust, which believes that
"abortion in all of its forms is evil."

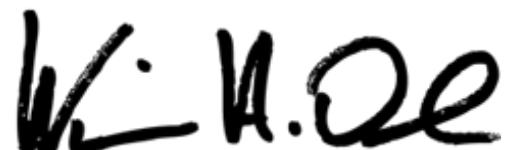
19 **DAVIN 2.** Davin's goal in working for CMP was to harm Planned Parenthood.

20 **DAVIN 3.** Davin used a false identity to gain entry to and videotape at NAF conferences that
21 required identification.

22 **DAVIN 4.** Davin provided false information, including the BioMax brochure, to gain the trust of
23 Planned Parenthood employees to further her goal of ending abortion.

24 **IT IS SO ORDERED.**

25 Dated: November 4, 2019



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William H. Orrick
United States District Judge